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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

NO. 154

ADAM PIETRZAK
Petitioner and Appellant below.

UNITED STATES OF AMERICA
Respondent and Appellee below.

VS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

ADAM PIETRZAK
per se
269 N.W. 30th Street
Miami, Florida

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A.D. 1951

NO.....

ADAM PIETRZAK
Petitioner and Appellant below.

VS.

UNITED STATES OF AMERICA
Respondent and Appellee below.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

TO THE HONORABLE THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your Petitioner, ADAM PIETRZAK respectfully shows:

I.

STATEMENT OF MATTER INVOLVED

Petitioner was indicted in Miami, Florida in the United States District Court for the Southern District of Florida, and was charged with Violation of Section 111, title 18 U.S.C. with assault on U.S. Deputy Marshal in the service of Civil Summons.

The Government's testimony indicates that appellant was scraping paint off his mother's apartment building with a knife when he saw a strange man abruptly enter an apartment which his mother was showing a woman. Appellant, still holding the knife, followed and ordered the man to leave the premises, on threat of bodily harm. The man identified himself as a deputy United States Marshal present to serve a civil summons. Appellant repeated the order and threat, stating he did not believe the marshal's credentials were valid. The marshal advised the woman present (his wife) to phone for additional officers. Appellant then left the premises, followed by the marshal's wife. **The marshal remained on the premises at all times.** In a few minutes appellant returned and assisted the marshal in serving process upon appellant's mother, an ailing woman with a limited knowledge of English. Appellant was arrested, the complaint charging a violation of Title 18, §1501, ASSAULT ON PROCESS SERVER, **a misdemeanor.** The indictment was then brought under Title 18, §111, U.S. Code, ASSAULTING, RESISTING, OR IMPEDING CERTAIN OFFICERS OR EMPLOYEES, **a felony.** Appellant's motion for trial under §1501 was overruled. He was tried and convicted on §111, with sentence placed at imprisonment for one year and a fine of three hundred dollars, **the maximum penalty authorized under §1501.** On motion for suspended sentence letters from persons in Chicago, Miami, and the Boy Scouts of America attesting to appellant's excellent character and reputation were made part of the record. The trial court refused to suspend sentence.

II.
JURISDICTION

The judgment of the Court of Appeals was entered on April 20, 1951. (R488).

III.
STATUTES INVOLVED

The provisions of both Sections 111 and 1501 of Title 18, U.S.C. as set forth in the appendix, pp. 10-11.

IV.
QUESTION PRESENTED

Whether petitioner should have been prosecuted under Section 1501, Title 18 U.S.C. which deals with Assault on process server, in serving a Civil Summons, a specific statute, rather than under Section 111 of Title 18 which is a general statute and very broad, which covers twenty five classes of government employees and is a catch all statute to protect Federal employees and officers who have not been protected until passage of Section 111 and 1114.

V.
REASON RELIED ON FOR ALLOWANCE OF WRIT

The Circuit Court of Appeals for the Fifth District committed error in not reversing the lower Court when a specific statute and a general statute are in conflict and grant the petitioner a new trial under Section 1501 Title 18 U.S.C.

WHEREFORE, your petitioner prays that a Writ of Certiorari issue to the United States Circuit Court of Appeals for the Fifth District in this case numbered red and entitled on its docket as follows: No. 13, 115, Adam Pietrzak, Appellant vs. United States of America, Appellee, to the end that said case may be reviewed and determined by this Court and said judgment of said Court of Appeals be reversed and a new trial granted by this Court.

Dated..... Signed.....

ADAM PIETRZAK
per se

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.
OPINION OF COURT BELOW

The opinion of the Circuit Court of Appeals for the Fifth Circuit appears in full in the record. (R 482-487).

II.
JURISDICTION

The jurisdictional statement will be found in the petition for Writ of Certiorari and is incorporated here by reference.

III.
STATEMENT OF CASE

So far as is material to the question here presented the statement of the case will be found in the petition for Writ of Certiorari under "Statement of Matter Involved" and is incorporated here by reference.

IV.
SPECIFICATION OF ERROR

The Court erred in concluding that the government procesutor might bring the action under either section when the Appellant, Petitioner, here should be prosecuted under a specific statute (Sec. 1501, Title 18 U.S.C.) which deals specifically with the unlawful act as presented by the evidence in the case.

THE COURT ERRED IN DENYING APPELLANT'S MOTION THAT THE INDICTMENT AGAINST HIM BE QUASHED.

The Government's indictment, unlike the complaint, was brought under the general section 111 of Title 18 (appendix p. 10), the allegation being that appellant "unlawfully did forcibly assault, resist, oppose, impede, intimidate, and interfere with the said Jack F. Peeples in the performance of his official duties as aforesaid in serving and attempting to serve civil process . . ." This indictment

squarely fits the specific section 1501, (appendix p. 10), under which appellant properly moved for trial.

It is Hornbook law that WHERE A SPECIFIC STATUTE AND A GENERAL STATUTE COVER THE SUBJECT MATTER, THE SPECIFIC STATUTE IS CONTROLLING. (1)

Indeed, the United States Supreme Court, speaking through Mr. Justice Murphy in CLIFFORD F. MacEVOY COMPANY et al v. UNITED STATES, 322 U.S. 102, 64 S.Ct. 890 (1944) stressed this rule recently in unmistakeable language. Said the Court, on page 107; "However inclusive may be the general language of the statute, it 'will not be held to apply to a matter specifically dealt with in another part of the same enactment * * *. Specific terms prevail over the general in the same or another statute which otherwise might be controlling.' GINSBERG & SONS v. POPKIN, 285 U. S. 204, 208, 52 S.Ct. 322, 323, 76 L.Ed. 704 (1932)." In the face of this, may a District Attorney seriously argue that Congress intended to give him whimsical and arbitrary discretion to decide what punishment shall be meted out to a defendant whose offense falls under both 1501 and 111 ?

Other recent authorities, if authorities be needed, stressing the rule that the specific statute must prevail over the general are :

BALTIMORE & OHIO R. R. CO. v. CHICAGO RIVER & INDIANA R. CO., 170 F. 2d 654 (1948);

SHELTON v. UNITED STATES, 165 F. 2d 241, (1947);

DETRICH v. HOWARD, 155 F. 2d 307 (1946);

ROBINSON v. UNITED STATES, 142 F. 2d 431, (1944).

The three latter cases come very close to meeting the exact situation of this case. In the SHELTON case the Court

1. STATE OF MISSOURI v. ROSS, 299 U.S. 72, 57 S.Ct. 60, 81 L.Ed. 46 (1936); PRICE v. UNITED STATES, 74 F. 2d 120, (C.C.A.5th, 1934), *cert denied*, 294 U.S. 720, 55 S. Ct. 549, 79 L. Ed. 1708 (1935); UNITED STATES v. HESS, 71 F. 2d 78, (C.C.A.8th,1934); SIMON v. SIMON, 26 F. 2d 530, C.C.A.D.C. 1928); UNITED STATES v. GRIFFIN, 14 F. 2d 326, (D.C.W.D.Va., 1926); McCLINTICK v. UNITED STATES, 283 F. 781, (C.C.A. 8th, 1922; UNITED STATES v. LAPP, 244 F. 377, (C.C.A. 6th, 1917).

of Appeal for the District of Columbia reversing appellant's conviction on a general felony statute, **holding that a specific misdemeanor statute governed,** and citing the Supreme Court decision in the MacEVOY case, supra. Similarly, in the DETRICH case, the 7th Circuit Court of Appeals ruled that where one criminal statute dealt specifically with a part of the general subject in a definite manner and is repugnant to the more general provisions of the same or another law covering the same general subject, the former specific act prevails.

The ROBINSON case dealt with the theft of certain Post Office revenues. A statute specifically covered such an offense. The indictment was brought under a statute dealing with the theft of United States property in general. A conviction under the latter statute was held erroneous by the Court of Appeals, which quoted with approval the statement that the specific must always prevail over the general, and cited in support of this point both UNITED STATES v. CHASE, 135 U.S. 255, 10 S.Ct. 756, 34 L.Ed. 117 (1890) and GINSBERG & SONS v. POPKIN, supra. Because the Specific Statute must prevail over the general, reversal is necessary here.

Since 1790 Congress has classified assaults on process servers as misdemeanors, and the courts have consistently recognized this. (2)

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2. UNITED STATES v. LUKINS, 26 Fed. Cas. No. 15,639 (C.C.Pa. 11818) (defendant threatened deputy marshal with iron instrument); UNITED STATES v. GOURE, 25 Fed. Cas. No. 15,240 (C.C., D.C. 1834) (defendant threatened to kill constable who tried to arrest him without a warrant); UNITED STATES v. BUCK, 24 Fed. Cas. No. 14,680 (D.C.Pa. 1860) (attempt to rescue prisoner from marshal's custody); CHARGE TO GRAND JURY, 30 Fed Cas. No. 18,250, (C.C. Mass. 1854) (construing any resistance to service of process as falling within the misdemeanor statute); UNITED STATES v. McDONALD et al, 26 Fed. Cas. No. 15,667 (C.C.Wisc. 1879) (defendants forcibly removed property held by marshal under writ of attachment); UNITED STATES v. MARTIN, 17 Fed. 150, (D.C.Ore. 1883) (defendant forcibly prevented marshal from arrestinng two other persons); BLAKE v. UNITED STATES, 717 Fed. 286 (C.C.A. 1st, 1895) (assault "with force and arms" upon deputy marshal); UNITED STATES v. MULLIN, 71 Fed. 682, (D.C.Neb. 1895) (defendant did resist, assault, beat, and wound process server); HOGG v. UNITED STATES, 35 F. 2d 954 (C.C.A.5th, 1929) (defendant obstructed officers pursuing fleeing car); UNITED STATES v. MELTZER, 100 F. 2d 739 (C.C.A.7th, 1938) (defendant charged with obstructing justice).

Section 1501 had its beginnings in the twenty-second section of the Act of Congress, passed on April 30, 1790 (1 Stat. 112, later Revised Statutes 5398). The original section made it a misdemeanor to "knowingly and wilfully obstruct, resist, or oppose" service of process by "any officer of the United States," or to assault, beat or wound" any such person engaged in making service. (Appendix pg. 10). Its language is most identical to that of 1501 today. Since 1790 there has always been a section equivalent to the foregoing in our Criminal Code, and at no time has violation of it been classified a felony. In UNITED STATES v. LOWRY et al, 26 Fed. Cas. No. 15,636 (1808), one of the earliest of the reported cases, three armed men who threatened to kill a marshal if he persisted in executing a writ of attachment against them were prosecuted under R.S. 5398, forerunner to 1501. Footnote No. 2 lists other cases held under 1501 or its earliest equivalents..

ON THE OTHER HAND, A THOROUGH SEARCH DOES NOT REVEAL ONE SINGLE PRIOR INSTANCE WHERE §111 (or its earlier equivalents) HAS BEEN USED AGAINST A DEFENDANT CHARGED WITH ASSAULT ON ONE SERVING A PROCESS. Instead, this section, which covers broadly some 25 or 30 classes of Government officers and agents, has been used against defendants engaged in illegal enterprises, who assaulted the Governments agents whose duty it was to collect evidence or to apprehend them. (3) Congress has recognized a vast difference between an assault on a Treasury or Justice Department Agent engaged in hunting down criminals, and an assault on a marshal making civil process, and has never sought to brand with the stigma of felon one guilty of the latter offence.

The Fifth Amendment to our Constitution guarantees that no person shall be deprived of life, liberty, or property

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3. Brown v. ZERBST, warden, 99 F. 2d 745 (C.C.A.5th, 1938) (Assault on investigator of the alcohol tax unit); PALMQUIST v. UNITED STATES, 149 F. 2d 352, (C.C.A. 5th, 1945) (assault on officer of the alcohol tax unit, i.e., a Treasury Agent); GARZA v. UNITED STATES, 159 F. 2d 413 (C.C.A. 5th, 1947) (assault on Inspector of Bureau of Customs, of Treasury Dept.)

without due process of law. The requirement of due process demands a spirit of equality in the administration of all Government functions. Here the appellant was charged with conduct that has regularly, in the past spelled misdemeanor, yet was indicted on a felonous charge. Such an indictment is arbitrary and inconsistent with the past administration of our Criminal Code. Its future result, if unchecked, would be to brand appellant a felon for the remainder of his life, and to cause him the loss of his civil rights. Its past result was to allow the Government a greater number of peremptory challenges than it should have been allowed under a misdemeanor trial, **and it denied to appellant his defense of lack of knowleduge.** (4)

In UNITED STATES v. COMBS, 73 F. Supp. 813 (D.C.E.D. Ky., 1947), the court pointed out that scienter is not an element of §111, but must be proven by the Government to sustain a 1501 conviction. (5) It is the legislature's function to define the offense, as well as to state its elements. (5A) The courts must prevent usurpation of this function by the prosecuting agencies.

More than precedent is against the use of §111 in the present case. There is always a presumption that a new statute does not oust an established unrepealed one, and a further presumption that a penal statute does not intend that which is unreasonable or unjust. (6)

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4. PETTIBONE v. UNITED STATES, 148 U.S. 202 (1892); UNITED STATES v. TAYLOR, 57 Fed. 391 (C.C.Va. 1892); BLAKE v. UNITED STATES, 71 Fed. 286 (C.C.A.1st 1895); COLEMAN v. UNITED STATES, 268 F. 468 (C.C.A.6th, 1920); SPARKS v. UNITED STATES, 90 F. 2d 61 (C.C.A.6th, 1937).

5. See also 48 A.L.R. 747, 755 (1927), discussing the various state treatments of statutes similar to 1501.

5A. District of Columbia v. Buckley, 128 F. 2d 17 (1924); United States v. Wiltberger, 5 Wheat 76, 95 (1820).

6. Bridgman, MAXWELL on the INTERPRETATION OF STATUTES (7th ed.) 1929.

Section 111 plugs certain prior loopholes in the Criminal Code, by giving statutory protection to many classes of Government agents who were not covered in prior existing statutes. (7)

Congress has been free to repeal section 1501 since 1790, but has never yet chosen to do so. The court is now free to clearly uphold the place of 1501 in our statutory scheme.

It is most respectfully submitted, therefore, that this case is one calling for the exercise of this court's power of supervision by granting the Writ of Certiorari and reviewing and reversing the decision of the Honorable United States Circuit Court of Appeals for the Fifth Circuit and granting the Petitioner a new trial.

Respectfully submitted,

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7. See p. 2456 of Special Pamphlet, U. S. Code Congressional Service, containing revision of Title 18 along with revisor's notes and legislative history.

APPENDIX

STATUTES INVOLVED

Tit. 18, §1 **OFFENSES CLASSIFIED**

Notwithstanding any Act of Congress to the contrary:

(1) Any offense **punishable** by death or imprisonment for a term exceeding one year is a felony.

(2) Any other offense is a misdemeanor.

§.111 **ASSAULTING, RESISTING, OR IMPEDING.. CERTAIN OFFICERS OR EMPLOYEES.**

Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any persons designated in section 1114* of this title while engaged in or on account of the performance of his official duties, shall be fined not more than $5,000. or imprisoned not more than three years, or both.

Whoever, in the commission of any such acts uses a deadly or dangerous weapon, shall be fined not more than $10,000. or imprisoned not more than ten years, or both.

(*Section 1114 broadly lists twenty-five or more classes of government employees falling within its scope.)

§1501 **ASSAULT ON PROCESS SERVER**

Whoever knowingly and willfully obstructs, resists, or opposes any offcer of the United States, or other person duly authorized in serving, or attempting to serve or execute, any legal or judicial writ or process of any court of the United States, or United States Commissioner; or

Whosoever assaults, beats, or wounds any officer or other person duly authorized, knowing him to be such officer, or other person so duly authorized, in serving or executing any such writ, rule, order, process, warrant, or other legal or judicial writ or process—

Shall, except as otherwise provided by law, * * be fined not more than $300. or imprisoned not more than one year.

REVISOR'S NOTES

(**"The phrase 'except as otherwise expressly provided by law, was inserted because sections 2231, 2232, and 2233 of this title provide greater penalties for obstructing service of search warrants.")

THE 22nd SECTION OF THE ACT OF CONGRESS, PASSED APRIL 30, 1790.

The 22nd section of the Act of Congress, passed April 30, 1790, (1 Stat. 112) entitled, "An Act for the punishment of certain crimes against the United States" stated that

". . . If any person or persons shall knowingly and willfully obstruct, resist, or oppose any officer of the United States, in serving, or attempting to serve or execute any mense process or warrant or any rule or order of the courts of the United States, or any other legal or juridical writ or process whatsoever; or shall assault, beat, or wound any officer or other person duly authorized, in serving or executing any writ, rule, order, process, or warrant aforesaid, every person so knowingly and willfully offending in the premises, shall, on conviction, thereof, be imprisoned not exceeding twelve months, and fined, not exceeding three hundred dollars."

(R. S. 5398)